

23-650 PROCUREMENT BY NEGOTIATION

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This section contains policies and procedures which shall be observed by counties in procurements by negotiation, as distinguished from formal advertising, and the limitations upon its use.

- .1 Contracts may be negotiated without formal advertising when one or more of the following exists:
 - .11 When a public emergency exists and the urgency is such that time is not available for formal advertising. This should be applied only in emergencies caused by circumstances outside of the county's control and not for delays caused by county inaction.
 - .12 If rates established by the state are to be used for payments and SDSS has notified the counties that formal advertising is not necessary for a particular program.
 - .13 If the aggregate annual amount involved does not exceed \$10,000. However, qualifications and price must still be solicited through a manner consistent with the county's own procurement policies. Selection shall be made using the criteria set forth in Section 23-650.2.
 - .14 For any service to be rendered by any federal, state, or local government agency, public university, public college or other public educational institution. SDSS may require formal advertising when contracts with government agencies or public educational institutions are considered excessive in price when compared to similar services provided through competition, or where competition between public and private agencies is necessary to accomplish program purposes.

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- .15 For services for which it is impracticable to secure competition. This requirement may be satisfied by one of the following:
- .151 When services can be obtained only from a single source. The determination of single source shall be established through a formal, publicly advertised, pre-bid survey to determine that only one source exists or only one source is willing and available to fulfill the contract.
- .152 When bids or proposals have been solicited and competition is determined to be inadequate.
- .16 For emergency shelter care, contracts providing six (6) or fewer beds.
- .17 If the county develops other innovative methods of selection. Such methods shall require prior approval by SDSS and, when appropriate, by the federal grantor agency. When prior federal approval is required SDSS will request such approval. The county shall request approval of an innovative procurement method in writing, including a description of the method, the benefit to the program of using the method, and level of competition in their area to such contracts.
- .171 The state will review the request for cost impact, overall benefit to the program to be served, and compliance with state and federal goal, as reflected in these regulations, of encouraging maximum competition. If the state approves of the innovative procurement, it will forward the material, when required, to the appropriate federal grantor agency, with a recommendation for approval. If SDSS denies the request, it will respond to the county giving reasons for the denial, and recommendations, if any, for gaining approval. The state shall also notify the county of federal approval or denial of the innovative procurement method. SDSS will notify the county within 15 calendar days of receipt if the required information is complete or deficient, and within 45 days, upon receipt of complete information for In-Home Supportive Services procurements and 30 days for other procurements, of its decision or that it is forwarding a recommendation for approval to the federal government. SDSS will notify the county within 10 days upon receipt of the federal decision.

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- .172 The state has not had any requests for using innovative procurement methods during the past two years. Records from any previous requests are no longer available.
- .18 Other situations, where unique circumstances necessitate procurement by negotiation, shall require prior SDSS approval and, when necessary, federal agency approval.
- .2 Whenever services are to be procured by negotiation, proposals shall be solicited from as many qualified sources as is reasonably practicable. During the course of negotiations, appropriate factors, including the following, shall be considered:
- .21 Comparison of prices quoted with prices for the same or similar services from other sources.
- .22 Comparison of the business reputation, capacity, and responsibility of the respective persons or firms who submit offers.
- .23 Consideration of the quality of the services offered, including the same or similar services previously furnished, with due regard of conformance with specification requirements.
- .24 Consideration of the existing and potential workload of the persons or firms submitting offers.